

Notice of Allowability

Application No.

09/954,764

Examiner

Phillip Gambel

Applicant(s)

BOER ET AL.

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 7/29/04
2. ☒ The allowed claim(s) is/are 6,8-11, 29-30 renumbered 1-7
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Phillip Gambel
Phillip Gambel
Primary Examiner 10/14/04
Art Unit: 1644
Tech Center 1600

Art Unit: 1644

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office Action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 7/29/04 has been entered.

Claims 6, 8-11 and 29-30 are pending.

Claims 1-5, 7 and 12-28 have been canceled previously.

REASONS FOR ALLOWANCE

2. The following is an Examiner's Statement of Reasons for Allowance:

As indicated previously, methods of treating IgE-mediated allergic diseases with anti-CD40 antibodies that are free of significant agonistic activity and binding to a human CD40 antigen located on the surface of a human B cells, wherein the binding of the antibody to the CD40 antigen on the surface of said B cell prevents the growth or differentiation of the B cell appear to be free of the prior art. Accordingly, the claims of this application are deemed allowable.

The submission of the copy of the Declaration by Paul Savereide regarding the biological deposits and the accompanying contracts with ATCC outlining the terms of agreement for maintenance and public availability of biological deposits is acknowledged.

As indicated in the parent application USSN 08/030,158, now U.S. Patent No. 5,677,165, the de Boer declaration under 37 C.F.R. § 1.132 was sufficient to overcome a possible prior art rejection of the instant claims based upon de Boer et al., Journal of Immunological Methods 152: 15-23 (1992) (see C9 on PTO Form 1449).

With respect to the notice of an April 20, 2004 Communication from the European Patent Office regarding third party observations that was lodged in a European patent application that is related to the above-identified application.

It is noted that the filing date of the instant claims is deemed to be the filing date of the priority application USSN 08/070,158, filed 5/28/93, as the earliest priority application USSN 07/910,222, filed 7/9/02 does not provide sufficient written support for the claimed "methods of treating IgE-mediated allergic diseases with anti-CD40 antibodies that are free of significant agonistic activity and binding to a human CD40 antigen located on the surface of a human B cells, wherein the binding of the antibody to the CD40 antigen on the surface of said B cell prevents the growth or differentiation of the B cell".

Art Unit: 1644

Further, it is noted applicant has satisfied the requirement for the deposit of biological materials with respect to the claimed 5D12, 3A8 and 3C6 antibodies / hybridomas consistent with 37 CFR 1.804(a), which specifies not only a permissible time frame for making an original deposit, but also specifies that the biological materials deposited must be specifically identified in the application for patent as filed. See MPEP 2406.01

3. Any comments considered necessary by applicant must be submitted no later than the payment of the Issue Fee and, to avoid processing delays, should preferably **accompany** the Issue Fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip Gambel whose telephone number is (571) 272-0844. The examiner can normally be reached Monday through Thursday from 7:30 am to 6:00 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (571) 272-0841.

The fax number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Phillip Gambel, PhD.
Primary Examiner
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October 14, 2004